

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:BO6

PLR-150155-09

Date:

February 17, 2010

Legend

Acquiring =

Partnership =

Merger Sub =

Target =

Subsidiaries =

Date 1 =

Date 2 =

Date 3	=
Date 4	=
Date 5	=
State A	=
State B	=
Day 1	=
Consultant	=

Dear

This replies to your letter, dated October 27, 2009, as submitted by your authorized representatives, on behalf of Acquiring and its Subsidiaries, requesting a ruling that the Commissioner determine, pursuant to § 1.1502-75(b)(2) of the Income Tax Regulations, that Subsidiaries had joined in the making of Acquiring Group's consolidated return for the period Date 1 through Date 4. The information in that letter and supplemental letters, dated November 23, 2009, December 18, 2009 and January 20, 2010, is summarized below.

Summary of Facts

Acquiring is a State A corporation that was formed on Date 1, and is wholly-owned by Partnership. Merger Sub was also formed on Date 1 as a wholly-owned State B subsidiary of Acquiring. Immediately before the transaction on Date 2, Acquiring and Merger Sub constituted an affiliated group as defined in § 1504(a)(1) of the Internal Revenue Code. Prior to the transactions described below, Target was a State B corporation that was the common parent of a consolidated group ("Target Group") filing consolidated tax returns with a fiscal year ending on Day 1.

On Date 2, Acquiring acquired all of the stock of Target in exchange for cash as part of a transaction whereby Merger Sub was merged with and into Target with Target continuing as the surviving corporation. As part of the merger, Merger Sub ceased its separate corporate existence. Following the merger, Target became wholly-owned by Acquiring. Acquiring and the Target Group constituted an affiliated group as defined in § 1504(a)(1) with Acquiring as the new common parent ("Acquiring Group").

As a result of the acquisition, the Target Group was terminated pursuant to § 1.1502-75(d)(1). The Target Group filed a short period consolidated return for the period Date 3 through Date 2. Since the acquisition did not qualify as a reverse acquisition under § 1.1502-75(d)(3), the Acquiring Group adopted the calendar tax year of its common parent pursuant to § 1.1502-76(a). The Acquiring Group timely filed its initial consolidated tax return for the period from Date 1 through Date 4 but inadvertently only included one executed Form 1122 for all of the members in the Acquiring Group.

On Date 5, as part of a related project, Consultant, which had access to the initial consolidated return filed by the Acquiring Group, brought the oversight to Acquiring's attention. Acquiring requests a ruling that the members listed on the Affiliations Schedule, Form 851, for the year ended on Date 4 have joined in the filing of its consolidated return for the period Date 1 through Date 4.

Representations

Acquiring has made the following representations:

- (a) The income and deductions of Acquiring, Target, and Subsidiaries were included in the timely filed consolidated return for the year ended on Date 4.
- (b) A separate return was not filed by Acquiring, Target, or Subsidiaries for the year ended on Date 4.
- (c) Acquiring, Target and Subsidiaries were included in the Affiliations Schedule, Form 851, for the year ended on Date 4.

Law

Section 1501 of the Code provides that the making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to all the consolidated return regulations prescribed under section 1502 prior to the last day prescribed by law for the filing of such return. The making of a consolidated return shall be considered as such consent.

Section 1.1502-75(a)(1) of the Income Tax Regulations provides that a group which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member during any part of the taxable year for which the consolidated return is to be filed consents to the regulations under § 1502.

Section 1.1502-75(b)(1) provides that the consent of a corporation shall be made by such corporation joining in the making of a consolidated return for such year. A

corporation shall be deemed to have joined in the making of such return for such year if it files a Form 1122 in the manner specified in § 1.1502-75(h)(2).

Section 1.1502-75(h)(2) provides that if, under the provisions of § 1.1502-75(a)(1), a group wishes to file a consolidated return for a taxable year, then a Form 1122 must be executed by each subsidiary. The regulation provides rules for properly executing Forms 1122 and attaching them to a consolidated return and also provides that a Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for its immediately preceding taxable year(s).

Section 1.1502-75(b)(2) provides that, if a member of the group fails to file Form 1122, the Commissioner may under the facts and circumstances determine that such member has joined in the making of a consolidated return by such group. The circumstances that the Commissioner will take into account in making this determination include the following: (i) Whether or not the income and deductions of the member for such taxable year were included in the consolidated return; (ii) Whether or not a separate return was filed by the member for that taxable year; and (iii) Whether or not the member was included in the Affiliations Schedule, Form 851, for such taxable year.

Ruling

Based solely on the information submitted and the representations made by Acquiring, we rule that the members listed on the enclosed Affiliations Schedule, Form 851, have joined in the making of the Acquiring Group's consolidated return for the period Date 1 through Date 4. Thus, in accordance with the requirements for joining in filing a consolidated return as set forth in section 1501, the members are determined to have consented to all of the consolidated return regulations prescribed under section 1502 prior to the last day prescribed by law for filing of such return.

Caveats

We express no opinion about the tax treatment of the facts described above under other provisions of the Code or Regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, these facts that are not specifically covered by the above ruling.

The ruling contained in this letter is based upon information and representations submitted on behalf of Acquiring and its Subsidiaries and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the taxpayer's ruling request. Verification of this material may be required as part of the audit process.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Richard M. Heinecke
Assistant to the Branch Chief, Branch 6
Associate Chief Counsel (Corporate)